

**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
Honolulu, Hawaii**

April 25, 2008

**Board of Land and
Natural Resources
State of Hawaii
Honolulu, Hawaii**

Regarding: Appointment and Selection of a Hearing Officer to Conduct All Hearings
for One (1) Contested Case Hearing

Subject Petition: Docket No. OA-08-07

In the matter of a Contested Case Hearing request to intervene in regards to amendments to Conservation District Use Permit (CDUP) OA-2670 to construct a Marina Entrance Channel located at Honouliuli, Ewa, Oahu.

Background

On February 29, 2008, the Department received a petition from Michael Kumukauoha Lee contesting amendments to CDUP OA-2670 that were approved by the Board on February 22, 2008. Amendments were proposed to decrease the size of the marina and to update the permit (Exhibit 1).

Authority for Designating Hearing Officers

Hawaii Administrative Rules (HAR) §13-1-32 (d) provides that the BLNR may conduct the Contested Case Hearing, or at its discretion, may appoint a hearing officer to conduct the hearing. Additionally, Hawaii Revised Statutes (HRS) §92-16 and §171-6 also provides that the Board may delegate to the Chairperson the authority to select the hearing officer to conduct a Contested Case Hearing.

Basis for Designating Hearings Officers

Conducting a Contested Case Hearing may involve: giving notice of hearings, administering oaths, compelling attendance of witnesses and the production of documentary evidence, examining witnesses, certifying acts, issuing subpoenas, making rules, receiving evidence, holding conferences and hearings, fixing filing deadlines, and disposing of other matters that may arise during the orderly and just conduct of a hearing. History suggests that designating a Hearing Officer to perform these actions may provide a more expeditious resolution of the case than having the full Board conduct the hearing.

Discussion:

Staff notes HAR, §13-1-31 (3) notes, "all persons who have some property interest in the land, who lawfully reside on the land, who are adjacent property owners, or who otherwise can

demonstrate that they will be so directly and immediately affected by the proposed change that their interest in the proceeding is clearly distinguishable from that of the general public shall be admitted as parties upon timely application."

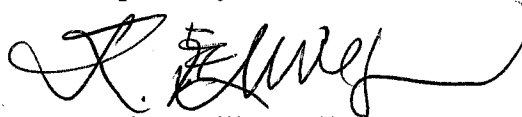
Staff notes that, by designating a Hearing Officer to conduct the hearing, the Board does not relinquish its authority to ultimately decide on the matters being contested. The determinations of standing have not yet been made. Staff believes that the preliminary hearing on standing should also be conducted by the Hearing Officer rather, than the full Board. After the Hearing Officer conducts the preliminary hearing on standing, the Board would still retain its discretion in issuing Orders on this matter of standing. Further, should standing be granted, at the conclusion of the case, the Board would act with its own discretion on the Hearing Officer's Finding of Fact, Conclusion of Law, and Decision and Order.

Staff therefore recommends,

Recommendation:

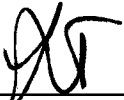
- 1) That the Board authorize the appointment of a Hearing Officer for Contested Case HA-08-07, and let the Hearing Officer conduct all the hearings relevant to the subject petition for a Contested Case Hearing, and
- 2) That the Board delegates the authority for selection of the Hearing Officer to the Chairperson.

Respectfully submitted,



K. Tiger Mills, Staff Planner
Office of Conservation and Coastal Lands

Approved for submittal:



Laura H. Thielen, Interim Chairperson
Board of Land & Natural Resources

BOARD OF LAND AND NATURAL RESOURCES

PETITION FOR A CONTESTED CASE HEARING

1. Name Michael Kumukauaha Lee Phone [REDACTED] Fax [REDACTED]
2. Address [REDACTED], Ewa, HI 96706
Email Address [REDACTED]
3. Attorney (if any) _____ Phone _____
4. Address _____
Email Address _____
5. Subject Matter: BLNR Mtg. 2/22/08 to Construct a Marina Entrance Channel at Honolulu. HASEKO
Amendments to Conservation District Use Permit OA-2670
6. Date of Public Hearing/Board Meeting February 22, 2008
7. Legal authority under which hearing, proceeding or action is being made §13-1-31, HAR
Supreme Ct. Kohaiki vs. Planning Director, County of Hawaii, Section 1-1, 7-1 HRS,
Ka Pūʻākai o Ka Aiea v. Land Use Commission
8. Nature of your specific legal interest in the above matter, including tax map key of property affected: Plat(1)9-1-012, Established Native Hawaiian Traditional
Cultural Practitioner in Ewa region protected by Constitution, HRS and judicial opinion
9. The specific disagreement, denial or grievance with the above matter: Inadequate and inefficient
government regulatory oversight of public trust resources thereby irreparably and
unreasonably harming my ability to exercise my traditional and customary Native Hawaiian practices,
DLNR/SHED admission that 3-4 years of developer self-monitoring activities and
loss and destruction of irreplaceable resources.
10. Outline of specific issues to be raised: Efficacy of DLNR/BLNR in properly identifying, assessing, mitigating
natural, cultural and historical resources and traditional and customary Native Hawaiian
practices
11. Outline of basic facts: Significant Atili burial site identified in beach area to
be destroyed by construction of marina entrance. Improper regulatory
oversight and archaeological investigation of cultural and historic resources.
12. The relief or remedy to which you seek or deem yourself entitled: Proper identification and protection
of historic and cultural sites. Protection of exercise of my religious and traditional and customary
native Hawaiian practices and historical, cultural and natural resources my practices rely upon.
(If there is not sufficient space to fully answer any of the items above, use additional sheets of paper.)

The above-named person hereby requests and petitions the Board of Land and Natural Resources for a Contested Case hearing in the matter described above. Dated: 1-29-08

Michael Kumukauaha Lee
EXHIBIT 1